IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 11619 of 2006(G)

PETITIONER:

B.VINOD, SON OF BALAKRISHNAN NAIR,
HON. SECRETARY, IDUKKI DISTRICT CRICKET
ASSOCIATION, MADATHIPARAMBIL, RIVER VIEW ROAD,
THODUPUZHA P.O., IDUKKI DISTRICT.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY SECRETARY
TO GOVERNMENT, REGISTRATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. IN INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM.

3. THE DISTRICT REGISTRAR, IDUKKI DISTRICT
REGISTRAR'S OFFICE, THODUPUZHA.

4. THE KERALA CRICKET ASSOCIATION HAVING
OFFICE AT AMAR JOTHI APPARTMENTS, 3RD FLOOR,
WOMENS COLLEGE ROAD, VAZUTHACAUD, THYCAUD P.O.,
THIRUVANANTAPURAM-14 REPRESENTED BY ITS HON.
SECRETARY.

5. IDUKKI DISTRICT SPORTS COUNCIL, OFFICE
AT GOVT. BOYS HIGH SCHOOL, NEWMAN COLLEGE JUNCTION
THODUPUZHA.

6. SARATH U.NAIR, COMMERCIAL SHOPPING
COMPLEX, OPPOSITE POLICE STATION, THODUUZHA.

*7. IDUKKI DISTRICT CRICKET ASSOCIATION, LIYAS
CHERUTHONY, IDUKKI, REP. BY ITS SECRETARY

ADDL. RESPONDENT NO.7 IS IMPLEADED AS PER ORDER DT. 5.9.07 IN I.A. NO. 5743/07

BY ADV. SRI.SHAJI P.CHALY
GOVERNMENT PLEADER SRI. BASANT BALAJI
SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BABU JOSEPH KURUVATHAZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 11619/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF RELEVANT PAGES OF THE ANNUAL REPORT FOR THE YEAR 1997-1998 OF THE IDUKKI DISTRICT SPORTS COUNCIL

EXT.P2. COPY OF RELEVANT PAGES OF THE ANNUAL REPORT FOR THE YEAR 1997-1998 OF KERALA CRICKET ASSOCIATION

EXT.P3. COPY OF THE CERTIFICATE DT. 16.9.98 ISSUED BY THE DISTRICT REGISTRAR, IDUKKI

EXT.P4. COPY OF THE ORDER DT. 25.1.99 OF THE DISTRICT REGISTRAR, IDUKKI

EXT.P5. COPY OF THE JUDGMENT DT. 4.11.05 IN O.P. NO.7497/1999

EXT.P6. COPY OF THE ORDER DT. 3.3.06 PASSED BY THE 2ND RESPONDENT

EXT.P7. COPY OF THE JUDGMENT DT. 17.1.01 OF THE MUNSIFF'S COURT, ERNAKULAM

RESPONDENT'S EXHIBITS:

EXT.R7(1). COPY OF NEWS ITEM PUBLISHED IN THE MANGALAM DAILY DT. 27.5.06

EXT.R7(2). COPY OF NEWS ITEM PUBLISHED IN THE DEEPIKA DAILY DT. 28.5.06 AT ITS PAGE NO.3.

EXT.R7(3). COPY OF NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DT. 27.5.06

EXT.R7(4). COPY OF NEWS ITEM PUBLISHED IN THE MANGALAM DAILY DT.31.5.06 AT ITS PAGE NO.3

EXT.R7(5). COPY OF NEWS ITEM PUBLISHED IN THE DESABHIMANI DAILY DT.30.5.07 AT ITS PAGE NO.3

EXT.R7(6). COPY OF NEWS ITEM PUBLISHED IN THE MANGALAM DAILY DT3.5.07, INVITING THE PARTICIPANTS TO PARTICIPATE IN THE DISTRICT LEAGUE CRICKET MEET

EXT.R7(7). COPY OF NEWS ITEM PUBLISHED IN THE DESABHIMANI DAILY DT. 3.5.07

EXT.R7(8). COPY OF NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DT. 4.5.07

EXT.R7(9). COPY OF NEWS ITEM PUBLISHED IN THE MANGALAM DAILY DT. 9.5.07 DETAILING THE INAUGURATION OF THE DISTRICT LEVEL CRICKET LEAGUE MATCH

/TRUE COPY/
PA TO JUDGE.

ANTONY DOMINIC, J.

W.P.(C). NO. 11619 OF 2006

Dated this the 5th day of September, 2007

J U D G M E N T

This writ petition is filed by the Hon. Secretary of Idukki District Cricket Association seeking to quash Ext.P6 order issued by the 2nd respondent and to declare that Ext.P3 registration certificate obtained by respondent No.6 is invalid and cannot be acted upon.

2. The Idukki District Cricket Association, of which petitioner is the Hon. Secretary, was incorporated in the year 1998 and is affiliated to the Kerala Cricket Association, the 4th respondent. The 6th respondent herein had moved the 3rd respondent, District Registrar, for incorporating a new association known as Idukki District Cricket Association. On completion of the formalities contemplated under Act 12 of 1955, the Idukki District Cricket Association was incorporated and Ext.P3 is the certificate of incorporation. Since the name of the new association was same as that of the Association represented by the petitioner, petitioner moved a compliant before the 3rd respondent against the incorporation of the new association.

3. An enquiry was conducted into the complaint of the petitioner and finally Ext.P4 order was issued on 25.1.99. In Ext.P4 order it has been found that the petitioner association is functioning in terms of the provisions of the Statute and under the Byelaws of the 4th respondent and that the incorporation of the new association by Ext.P3 was erroneous. On this basis, Ext.P3 order of incorporation was cancelled by the 3rd respondent. Ext.P4 order was challenged by the Idukki District Cricket Association (the new association) in O.P. No.7497/99. That Original Petition was disposed of by Ext.P5 judgment dated 4.11.05 with the following directions:

> ***"The petitioner shall submit a representation before the Inspector General of Registration, Thiruvananthapuram within a period of two months from today, after serving a copy of the same on the 3rd respondent as well as the Kerala Cricket Association. Thereafter the Inspector General of Registration shall consider the issue with notice to the petitioner, Kerala Cricket Association and the 3rd respondent. Appropriate orders thereon in accordance with law shall be passed by the Inspector General of Registration within another four months. Subject to the petitioner thus moving the inspector General of Registration, the interim order passed by this Court in C.M.P. NO.12626/1999 will continue till orders are passed by the said authority."***

4. In pursuance to Ext.P5, the 6th respondent herein, who was the then Secretary of the new association, filed a representation dated 25.1.06. The 2nd respondent thereafter passed Ext.P6 order.

In Ext.P6 order it was held that a detailed reading of the depositions and the records submitted as exhibits would show that the claims made by the petitioner herein and Shri. Mathew carries reasonable material for consideration. But he proceeded to hold that the issue raised before him was beyond his jurisdiction. It was held that remedy against Ext.P4 is provided in Section 25 of Act 12 of 1955. According to the 2nd respondent, if a person is aggrieved, he should move the State Government and the State Government in turn should apply to the District Court for dissolution of the Society. It is challenging Ext.P6 and seeking the reliefs mentioned above that this writ petition has been filed.

5. The 4th respondent, Kerala Cricket Association, has filed an affidavit supporting the plea in the writ petition. According to the 4th respondent, they are the State Association with 14 district level units all over the State and the petitioner is one such unit recognised by them, functioning in the Idukki district of Kerala. It is pointed out that their byelaws do not contemplate separate registration for the district wise units and they accept that the petitioner in this writ petition is the Secretary of their Idukki unit.

6. The 6th respondent, who was instrumental in the

incorporation of the new association, has also filed a counter affidavit wherein he has taken a totally different stand. According to him, of late he has realised the mistake and he wants the petitioner-association to be in existence as the representative of the 4th respondent.

7. The Idukki District Cricket Association (the new association) was not impleaded as a party in this writ petition. By filing I.A. No. 5743/07 they have sought to be impleaded as additional respondent No.7. According to them they are a necessary party to these proceedings and therefore they ought to be impleaded. Though the writ petitioner has filed a counter affidavit resisting their impleadment, during the course of the hearing the contentions were not seriously urged. Therefore I allowed I.A. No.5743/07 and they are impleaded as additional respondent No.7.

8. Sri. V.N. Achutha Kurup, learned Senior Counsel appearing for the additional 7th respondent, points out that the writ petition as originally filed is defective for non-impleadment of the new association. According to him the said defect is fatal, warranting dismissal of the writ petition. It is contended that the new association is an organisation independent of the 4th respondent and therefore it

is entitled to be incorporated at least at a district level. Learned counsel further points out that if the 4th respondent is hostile to them, the best they can do is to recognise their existence. But they cannot object to the incorporation of such an organisation. In his attempt to sustain Ext.P6 order, the learned counsel submits that the 2nd respondent lacks power to upset Ext.P4 order and that if any one is aggrieved by Ext.P4, recourse will have to be taken to the provisions of Section 25 of the Act and the State Government should move an application to the District Court for dissolution of the association. On this ground learned Senior Counsel seeks dismissal of the writ petition.

9. I have considered the rival submissions made by the counsel appearing for both sides. The primary question that arises for consideration is whether Ext.P6 order is sustainable or not. But before I decide the validity or otherwise of Ext.P6, the preliminary objection raised by learned Senior counsel regarding maintainability of the writ petition has to be dealt with. It is true that as originally filed, the writ petitioner had not impleaded the Idukki District Cricket Association (the new association) as a party. As such, that defect would have been fatal, warranting dismissal of the writ petition.

However, in this case the new association itself has voluntarily got itself impleaded. They have also filed a detailed affidavit in support of their contentions and detailed arguments were also led in support of Ext.P6 order. Therefore, not only that they have now come on record as additional respondent No.7 but also they had an effective opportunity to resist the contentions of the petitioner. In such a case the fact that they were not originally impleaded loom its significance as it has not caused any prejudice to them. For all these reasons the preliminary objection raised by the learned counsel is only to be rejected and I do so.

10. Coming to the merits of Ext.P6 order, it was rendered pursuant to Ext.P5 judgment. In Ext.P5 judgment, all parties including the new association and the petitioner, had agreed that the parties could be relegated to the 2nd respondent for resolution of the dispute. It was accordingly that this Court had directed the 6th respondent to file a representation to the 2nd respondent, who was ordered to consider the entire issue. In Ext.P6 order the 4th respondent found that the contentions of the writ petitioner and the Secretary of the State association carries reasonable materials for consideration. However, the 2nd respondent held that the matter was

beyond his jurisdiction and therefore he was incompetent to adjudicate the issue and at the same time unsettled Ext.P4 order. This approach of the 2nd respondent is contradictory. If he was incapable of resolving the issue, he should have not left it there without disturbing Ext.P4 and thus unsettling the position.

11. In so far as his plea of lack of jurisdiction is concerned, the same appears to be on the basis of the provisions contained in Act 12 of 1955. When this issue was argued in court, learned counsel for the petitioner placed reliance on Section 21 of the General Clauses Act 1897 and 20 of the State Act. Elaborating this aspect, the learned counsel made reference to the judgment of this Court in **Institute of Social welfare v. State of Kerala & Ors.** [2000 (1) K.L.J. 869] wherein it has been held as follows:

> *"The argument of counsel for the Election Commission that there is only a power in the Election Commission to register and there is no power to de-register has only to be stated to be rejected. It is clear that whenever a power to do something is conferred on a body, there is also conferred on that body the power to undo the same. Sections 16 and 21 of the General Clauses Act (corresponding to Sections 15 and 20 of the Kerala Act) also recognise such power. The power to do something obviously includes the power to undo that thing and the Election Commission cannot be heard to contend that once it has given registration to a political party, it has no right to act if that party with impunity, flouts the Constitution or subvert the sovereignty or democracy or the rule of law, the basis of our democracy. We have therefore no hesitation in holding that when a call for hartal made by an association or body of citizens is enforced by*

force and the activities of others unwilling to respond to the call is brought to a standstill by threat coercion or force, an occasion clearly arises for the Election Commission to take action for cancelling the registration or for de-recognition of that body or association."

12. This argument of the learned counsel for the writ petitioner is resisted by the learned Senior counsel appearing for the additional 7th respondent by making reference to Section 25 of Act 12 of 1955, which has been relied on by the 2nd respondent in Ext.P6. According to the learned counsel against Ext.P4 the remedy available is to move the State Government which in turn can move the District Court for dissolution of the association. According to the learned counsel since the act 12 of 1955 provides a remedy in Section 25 thereof, recourse to the provision of General Clauses Act is not permissible.

13. In my view, the procedure canvassed by the learned Senior Counsel is not what is contemplated in Section 25. Section 25 does not confer right on any stranger to move the State Government but is a power available to the Government only. The other category of persons whose right is recognised in Section 25 to move the District Court are the members of the association concerned. In this case, even according to the additional 7th

respondent, the petitioner or the 4th respondent are not members of the new association and therefore recourse to Section 25 is not available to a stranger like the petitioner. In such a situation the petitioner is entitled to move the 3rd respondent who can certainly invoke the power under Section 21 of the Central Act (Section 20 of the State Act) and as recognised by this Court in the aforesaid judgment, undo an act which requires to be undone. If that power is available, the stand of the 2nd respondent that he lacks power in this regard is erroneous and cannot be approved. For the same reason, I also cannot agree with the finding of the 2nd respondent that cancellation ordered by the 3rd respondent was without jurisdiction.

14. In the result, I hold that Ext.P6 order passed by 2nd respondent is illegal and cannot be sustained. Accordingly, Ext.P6 order will stand quashed and the 2nd respondent will reconsider the representation dated 25.1.06 submitted by the 6th respondent in pursuance to Ext.P5 judgment and pass fresh orders thereon dealing the entire issues raised by the parties. It is made clear that before final orders are passed as above petitioner, respondent Nos.4 & 6 and the additional respondent No.7 shall be given notice and afforded sufficient opportunity to be heard. It is also ordered that if

any of the parties files any supplementary representation, that will also be considered and representation, if any, shall be made within a period of one month from the date of receipt of a copy of this judgment and the final orders as directed shall be passed within three months thereafter.

The writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.8348/01

JUDGMENT

2nd August, 2007